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E. For a disputed item otherwise subject to the review set forth in this subdivision, the Department and the provider may mutually agree to bypass the expedited review process and proceed to a contested case hearing at any time prior to the time for the Department's submission under item C.

F. When the Department determines that the appeals of two or more providers otherwise subject to the review set forth in this section present the same or substantially the same adjustment, the Department may remove the disputed items from the review in this section, and the disputed items shall proceed in accordance with the contested case procedures. The Department's decision to remove the appealed adjustments to contested case proceeding is final and is not reviewable.

G. For a disputed item otherwise subject to the review in this section, the Department or a provider may petition the Chief Administrative Law Judge to issue an order allowing the petitioning party to bypass the expedited review process. If the petition is granted, the disputed item must proceed in accordance with the contested case procedures. In making the determination, the Chief Administrative Law Judge shall consider the potential impact and precedential and monetary value of the disputed item. A petition for removal to contested case hearing must be filed with the Chief Administrative Law Judge and the opposing party on or before the date on or before the date on which its submission is due under item B or C. Within 20 days of receipt of the petition, the opposing party may submit its argument opposing the petition. Within 20 days of receipt of the argument opposing the petition, or if no argument is received, within 20 days of the date on which the argument was due, the Chief Administrative Law Judge shall issue a decision granting or denying the petition. If the petition is denied, the petitioning party has 60 days from the date of the denial to make a submission under item B or C.

H. The Department and a provider may mutually agree to use the procedures set forth in this section for any disputed item not otherwise subject to this section.

I. Nothing shall prevent either party from making its submissions and arguments under this section through a person who is not an attorney.

J. Effective May 1, 1990, this section applies to all appeals for rate years beginning on or after June 30, 1988.

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Section 13.038 **Special appeals resolution project.** Effective October 1, 1993, a new appeal review process will be used to resolve rate appeals. The Department will issue a final determination on each appeal within a year. Providers who do not agree with the Department review may have a formal hearing.

Section 13.040 **Payment rate during appeal period.** The total payment rate established by the Department shall be the total payment rate paid to the provider while the appeal is pending.

Section 13.050 **Payments after resolution of appeal.** Upon resolution of the appeal any overpayments or underpayments shall be paid under Section 2.130.

Section 13.060 **Appeal expenses.** Expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider to the extent that:

- A. the provider is successful on each disputed item appealed; and
- B. this amount is not in excess of limits.

SECTION 14.000 VOLUNTARY RECEIVERSHIP.

Section 14.010 **Receivership agreement.** A majority of controlling individuals of a residential program may at any time ask the Department to assume operation of the residential program through appointment of a receiver. On receiving the request, the Department may enter into an agreement with a majority of controlling individuals and become the receiver and operate the program under conditions acceptable to both the Department and the majority of controlling individuals. The agreement will specify the terms and conditions of the receivership and preserve the rights of the persons being served by the program. A receivership set up under this section terminates at the time specified by the parties to the agreement.

Section 14.020 **Management agreement.** When the Department agrees to become the receiver of a program, the Department may enter into a management agreement with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the residential program subject at all times to the review and approval of the Department. A reasonable fee may be paid to the managing agent for the performance of these services.

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Section 14.030 **Rate adjustment.** The sections on rate recommendations and adjustments to the rate found in Section 15.000 also apply to voluntary receiverships.

Section 14.040 **Controlling individuals; restrictions on licensure.** No controlling individual of a residential program placed into receivership under Section 14.000 shall apply for or receive a license to operate a program for five years from the commencement of the receivership period. Section 14.000 does not apply to programs that are owned or operated by controlling individuals, that were in existence prior to the date of the receivership agreement, and that have not been placed into receivership.

Section 14.050 **Liability.** The controlling individuals of a residential program placed into receivership remain liable for any claims made against the residential program that arose from incidents or events that occurred prior to the commencement of the receivership period. Neither the Department nor the managing agent of the Department assumes this liability.

Section 14.060 **Liability for financial obligations.** Neither the Department nor the managing agent will be liable for payment of any financial obligations of the residential program or of its controlling individuals incurred prior to the commencement of the receivership period unless such liability is expressly assumed in the receivership agreement. Those financial obligations remain the liability of the residential program and its controlling individuals. Financial obligations of the residential program incurred after the commencement of the receivership period are the responsibility of the Department or the managing agent to the extent such obligations are expressly assumed by each in the receivership or management agreements. The controlling individuals of the residential program remain liable for any financial obligations incurred after the commencement of the receivership period to the extent these obligations are not reimburse in the rate paid to the residential program and are reasonable and necessary to the operation of the residential program. These financial obligations, or any other financial obligations incurred by the residential program prior to the commencement of the receivership period which are necessary to the continued operation of the residential program, may be deducted from any rental payments owed to the controlling receivership agreement.

Section 14.070 **Physical plant of the residential program.** Occupation of the physical plant after commencement of the receivership period will be controlled by items A and B.

A. If the physical plant of a residential program placed in receivership is owned by a controlling individual or related party, the physical plant may be used by the Department or the managing agent for purposes of the receivership as long as the receivership period continues. A fair monthly rental will be paid by the Department or the managing agent to the owner of the

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physical plant. This fair monthly rental will be determined by considering all relevant factors necessary to meet required arms-length obligations of controlling individuals. This rental will not include any allowance for profit or be based on any formula that includes an allowance for profit.

B. If the owner of the physical plant is not a related party, the controlling individual shall continue as the lessee of the property. However, during the receivership period, rental payments shall be made to the owner of the physical plant by the Department or the managing agent on behalf of the controlling individual. Neither the Department nor the managing agent assumes the obligations of the lease unless expressly stated in the agreement. Should the lease expire during the receivership, the Department or the managing agent may negotiate a new lease for the term of the receivership period.

Section 14.080 Receivership costs. The Department may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

Section 14.090 Receivership rate extension. For the biennium ending June 30, 1993, if a facility's residents continue to be served in the same location, the Department may continue the operating cost payment rate, including any program operating cost adjustments and special operating costs, for facilities under receivership beyond the receivership period in order that this portion of the payment rate remain in effect for one full calendar year plus the following nine months. The allowable property-related costs of the previous operator before the receivership shall be the basis for establishing the property-related payment rate for rate periods following the end of the receivership period.

Section 14.100 Sale of a facility under receivership. For the fiscal year ending June 30, 1994 or June 30, 1997, if a facility which is in receivership under Section 14.000 or 15.000 is sold to an unrelated organization:

A. The facility shall be considered a new facility under Section 12.000 for purposes of rate setting;

B. The facility's historical basis for the physical plant, land, and land improvements for each facility must not exceed the prior owner's aggregate historical basis for these same assets for each facility; and

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C. The allocation of the purchase price between land, land improvements, and physical plant shall be based on the real estate appraisal using the depreciated replacement cost method.

SECTION 15.000 INVOLUNTARY RECEIVERSHIP.

Section 15.010 **Application.** In addition to any other remedy provided by law, the Department may petition the district court in the county where the program is located for an order directing the controlling individuals of the program to show cause why the Department should not be appointed receiver to operate the program. The petition must contain proof by affidavit: (1) that the Department has either begun license suspension or revocation proceedings, suspended or revoked a license, or has decided to deny an application for licensure of the program; or (2) it appears to the Department that the health, safety, or rights of the residents may be in jeopardy because of the manner in which the program may close, the program's financial condition, or violations committed by the program of federal or state laws or rules. If the license holder, applicant, or controlling individual operates more than one program, the Department's petition will specify and be limited to the residential program for which it seeks receivership. The affidavit submitted must set forth alternatives to receivership that have been considered, including rate adjustments. The order to show cause is returnable not less than five days after service is completed and must provide for personal service of a copy to the program administrator and to the persons designated as agents by the controlling individuals to accept service on their behalf.

Section 15.020 **Appointment of receiver.** If the court finds that involuntary receivership is necessary as a means of protecting the health, safety, or rights of persons being served by the program, the court will appoint the Department as receiver to operate the program. The Department may contract with another entity or group to act as the managing agent during the receivership period. The managing agent will be responsible for the day-to-day operations of the program subject at all times to the review and approval of the Department.

Section 15.030 **Powers and duties of the receiver.** Within 36 months after the receivership order, the receiver will provide for the orderly transfer of the persons served by the program to other residential programs or make other provisions to protect their health, safety, and rights. The receiver or managing agent will correct or eliminate deficiencies in the program that the Department determines endanger the health, safety, or welfare of the persons being served by the residential program unless the correction or elimination of deficiencies involves major alteration in the structure of the physical plant. If the correction or elimination of the deficiencies requires major alterations in the structure of the physical plant, the receiver will

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take actions designed to result in the immediate transfer of persons served by the program. During the period of the receivership, the receiver and the managing agent will operate the program in a manner designed to preserve the health, safety, rights, adequate care, and supervision of the persons served by the program. The receiver or the managing agent may make contracts and incur lawful expenses. The receiver or the managing agent shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the functions of the receivership. No security interest in any real or personal property comprising the residential program or contained within it, or in any fixture of the physical plant, shall be impaired or diminished in priority by the receiver or the managing agent.

Section 15.040 Liability and liability for financial obligations. These are the same as those for voluntary receivership that are found in Section 14.000.

Section 15.050 Physical plant of the residential program. Occupation of the physical plant shall be governed by the following:

A. The physical plant owned by a controlling individual of the residential program or related party must be made available for the use of the program throughout the receivership period. The court will determine a fair monthly rental for the plant, taking into account all relevant factors necessary to meet required arms-length obligations of controlling individuals. The rental fee must be paid by the receiver to the appropriate controlling individuals or related parties for each month that the receivership remains in effect. No payment made to a controlling individual or related party by the receiver or the managing agent or any state agency during a period of the receivership shall include any allowance for profit or be based on any formula that includes an allowance for profit.

B. If the owner of the physical plant of a program is not a related party, the court will order the controlling individual to continue as the lessee of the property during the receivership period. Rental payments during the receivership period shall be made to the owner of the physical plant by the Department or the managing agent on behalf of the controlling individual.

Section 15.060 Fee. a receiver or the managing agent is entitled to a reasonable fee as determined by the court.

Section 15.070 Termination. An involuntary receivership terminates 36 months after the date on which it was ordered or at any other time designated by the court or when any of the following occurs:

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A. The Department determines that the program's license application should be granted or should not be suspended or revoked.

B. A new license is granted to the program.

C. The Department determines that all persons residing in the program have been provided with alternative residential programs.

D. The residential program closes.

Section 15.080 Emergency procedure. If it appears from the petition filed or from the affidavit filed with the petition or from testimony of witnesses under oath, that there is probable cause to believe that an emergency exists in a program, the court shall issue a temporary order for appointment of a receiver within five days after receipt of the petition. Notice of the petition must be served on the residential program administrator and on the persons designated as agents by the controlling individuals to accept service on their behalf. A hearing on the petition must be held within five days after notice is served unless the administrator or designated agent consents to a later date. After the hearing, the court may continue, modify, or terminate the temporary order.

Section 15.090 Rate recommendation. The Department may review rates of a program participating in the medical assistance program which is in receivership and that has needs or deficiencies documented by the Department of Health or the Department of Human Services. If the Department determines that a review of the rate established is needed, the Department will:

A. Review the order or determination that cites the deficiencies or needs.

B. Determine the need for additional staff, additional annual hours by type of employee, and additional consultants, services, supplies, equipment, repairs, or capital assets necessary to satisfy the needs or deficiencies.

Section 15.100 Adjustment to the rate. Upon review of rates the Department may adjust the program's payment rate. The Department will review the circumstances, together with the residential program cost report, to determine whether or not the deficiencies or needs can be corrected or met by reallocation residential program staff, costs, revenues, or other resources including any investments, efficiency incentives, or allowances. If the Department determines

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that any deficiency cannot be corrected or the need cannot be met with the payment rate currently being paid, the Department shall determine the payment rate adjustment by dividing the additional annual costs established during the Department's review by the residential program's actual resident days from the most recent desk-audited cost report or the estimated resident days in the projected receivership period. Upon the subsequent sale or transfer of the program, the Department may recover amounts that were paid as payment rate adjustments under this section. The buyer or transferee shall repay this amount to the Department within 60 days after the Department notifies the buyer or transferee of the obligation to repay.

Section 15.110 **Receivership costs.** The Department may use the accounts and funds that would have been available for the room and board, services, and program costs of persons in the residential program for costs, cash flow, and accounting purposes related to the receivership.

Section 15.120 **Receivership rate extension.** This section is the same as Section 14.090.

SECTION 16.000 RATE EXCEPTION FOR VERY DEPENDENT PERSONS WITH SPECIAL NEEDS.

Section 16.010 **Eligibility.** The purpose of the special needs rate exception is to facilitate the movement of very dependent mentally retarded persons from regional treatment centers to community-based ICFs/MR and to prevent the admission or readmission of very dependent clients with mental retardation to regional treatment centers from community-based ICF/MR programs.

The special needs rate exception is to provide to a special client services whose costs are not included in the per diem rate of the ICFs/MR or the per diem of the day training and habilitation service. The special needs rate exception is only to be allowed after all other funding sources or alternatives have been exhausted.

The additional funds made available by this rate exception are used to provide additional staff for client supervision and training, additional medical or therapeutic services, and additional equipment to enable the community providers to maintain or admit very dependent clients to their residential or day programs.

Section 16.020 **Payment rate.** The payment rate is calculated as follows:

A. Determine the payment limit. The combined per diem costs of day training and habilitation services, ICF/MR services, and the special needs rate exception payment for a client shall not exceed the medical assistance regional treatment center per diem for ICF/MR services. Legislative changes approved in July 1991 established this rate to be, for purposes of special needs rate calculations, the regional treatment center per diem rate in effect on July 1, 1990, indexed annually by the urban consumer price index (all items as forecasted by Data Resources, Inc.) for the next fiscal year over the current fiscal year.

The amount of funding available as a special needs rate exception differs between clients, depending on the cost of current medical assistance-funded ICF/MR and day training and habilitation services an individual client receives.

B. Calculate the allowable costs. For the purposes of this section, "allowable costs" include wages for direct care staff (including nursing staff) plus payroll-related costs and fringe benefit costs, consultant fees, staff training costs (trainer fees and wages paid to staff to attend), and certain equipment and supplies. Administrative costs and physical plant modifications are examples of costs that are not allowable for this purpose. Costs for services available from other resources are also excluded.

C. Compare allowable costs and limits outlined in item A to the facility's projected budget. The application for a rate exception includes client and provider eligibility information, a description of the allowable services intended to meet a short-term need for intensive services, and estimated costs for those services.

D. Approve the rate. The amount approved as a special needs rate exception is established based on the calculations outlined above in items A through C, as well as on the basis of reasonableness of costs (for example, typical wages for the industry), and the costs for similar services under this plan (for example, fee for assessment and program development by a consulting psychologist).

Section 16.030 **Payment for persons with special needs for crisis intervention services.** Community-based crisis services authorized by the Department, to a resident of an intermediate care facility for persons with mental retardation (ICF/MR) reimbursed under this section shall be paid by medical assistance in accordance with items A to F.

A. "Crisis services" means the specialized services listed in subitems (1) to (4)

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purchased under contract by the ICF/MR for a resident to prevent the resident from requiring placement in a more restrictive institutional setting such as an inpatient hospital or regional treatment center and to maintain the recipient in the present community setting. The crisis services provider:

(1) Assesses the recipient's behavior and environment to identify factors contributing to the crisis.

(2) Develops a resident-specific intervention plan in coordination with the service planning team and provides recommendations for revisions to the individual service plan if necessary to prevent or minimize the likelihood of future crisis situations. The intervention plan must include a transition plan to aid the resident in returning to the community-based ICF/MR if the resident is receiving residential crisis services.

(3) Consults with and provides training and ongoing technical assistance to the resident's service providers to aid in the implementation of the intervention plan and revisions to the individual service plan.

(4) Provides residential crisis services in an alternative, state-licensed setting approved by the Department when an ICF/MR is not able, as determined by the commissioner, to provide the intervention and protection of the resident and others living with the resident that is necessary to prevent the resident from requiring placement in a more restrictive institutional setting.

B. Payment for crisis services in item A shall be made only for services provided when the ICF/MR has executed a cooperative agreement with the crisis services provider to implement the intervention plan and revisions to the individual service plan as necessary to prevent or minimize the likelihood of future crisis situations, to maintain the resident in the present community setting, and to prevent the resident from requiring a more restrictive institutional setting.

C. Payment for residential crisis services is limited to 21 days, unless an additional period is authorized by the commissioner or part of an approved regional plan.

D. Payment to the ICF/MR shall be made for up to 18 therapeutic leave days during which the resident is receiving residential crisis services, if the ICF/MR is otherwise eligible to receive payment for a therapeutic leave day under Minnesota rules governing therapeutic leave.

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E. Payment rates for crisis services are established consistent with county negotiated crisis intervention services.

F. Payment under this section will be terminated if the commissioner determines that the ICF/MR is not meeting the terms of the cooperative agreement under item B, subitem (1) or that the resident will not return to the ICF/MR.

SECTION 17.000 SPECIAL SITUATIONS.

Section 17.010 **Closure.** In order to facilitate an orderly transition of residents from community ICFs/MR to services provided under the home and community-based services waiver programs, the Department may contract with the provider to modify the methods and standards for ICF/MR reimbursement as follows:

A. Extend the interim and settle-up rate provisions to include facilities covered by this section.

B. Extend the length of the interim period. An extension is limited to 24 months, except in instances when the Department grants a variance for facilities that are licensed and certified to serve more than 99 persons. In no case will the Department approve an interim period which exceeds 36 months.

C. Waive the investment per bed limitations for the interim period and the settle-up rate.

D. Limit the amount of reimbursable expenses related to the acquisition of new capital assets.

E. Prohibit the acquisition of additional capital debt or refinancing of existing capital debt unless prior approval is obtained from the Department.

F. Establish an administrative operating cost limitation for the interim period and the settle-up rate.

G. Require the retention of financial and statistical records until the Department has audited the interim period and the settle-up rate.

H. Require that the interim period be audited by a certified or licensed public accounting firm.

I. Amend any other provision to which all parties to the contract agree. Supplement 1 to this Attachment contains the portions of a closure agreement which may be established under this provision.

Section 17.015 Service reconfiguration project. The Department may approve a project to reconfigure two existing facilities, totaling 60 licensed beds, located on the same campus. The project requires the relocation of up to six beds to a six-bed facility, while reconfiguring the two existing facilities into a 34-bed facility and a ten-bed facility.

A. Ten beds will be decertified as the facilities are reconfigured.

B. Two beds in the 34-bed facility will be reserved for respite care for individuals receiving home and community-based services under waiver programs.

C. Upon Department approval:

(1) the two existing facilities' aggregate investment-per-bed limits in effect before the reconfiguration is the investment-per-bed limit after the reconfiguration;

(2) the 34-bed and ten-bed facilities are eligible for a one-time rate adjustment to be negotiated with the Department taking into consideration estimated excess revenues available from the six-bed facility;

(3) the relocated six-bed facility will receive the payment rates established for the former 46-bed facility until each facility files a cost report for a period of five months or longer ending on December 31 following their opening and those reports are desk audited by the Department. The 34-bed and ten-bed facilities will file their regularly scheduled annual cost reports;

(4) all facilities are exempt from the spend-up and high cost limits in Section 7.015 for the rate year following the first cost report submitted under subitem (3); and

(5) the maintenance limit for the 34-bed facility will be established following the language in Section 17.040. The maintenance limit for the ten-bed facility will be adjusted by the same ratio used to adjust the 34-bed facility's maintenance limit.

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Section 17.020 Wage equity.

Effective July 1, 1998, and ending September 30, 2000, the Department will make available the appropriate salary adjustment cost per diem calculated in items A to E to the total operating cost payment of each facility subject to payment under this attachment and the performance based contracting demonstration waiver project. The salary adjustment cost per diem must be determined as follows:

A. Computation and review guidelines. A state-operated community service, and any facility whose payment rates are governed by closure agreements, receivership agreements, or rate-setting procedures for newly constructed or newly established facilities or approved Class A to Class B conversions under Section 12.000, is not eligible for a salary adjustment otherwise granted under this section. For purposes of the salary adjustment per diem computation and review in this section, the term "salary adjustment cost" means the facility's allowable program operating cost category, employee training expenses, and the facility's allowable salaries, payroll taxes, and fringe benefits. The term does not include these same salary-related costs for either administrative or central office employees.

For the purposes of determining the amount of salary adjustment to be granted under this section, the Department must use the reporting year ending December 31, 1996, as the base year for the salary adjustment per diem computation.

B. Salary adjustment per diem computation. For the rate period beginning July 1, 1998, each facility shall receive a salary adjustment cost per diem equal to its salary adjustment costs multiplied by 3.0 per cent, divided by the facility's resident days.

C. Submittal of plan. A facility may apply for the salary adjustment per diem calculated under this item. The application must be made to the Department and contain a plan by which the facility will distribute the salary adjustment to employees of the facility. For facilities in which the employees are represented by an exclusive bargaining representative, an agreement negotiated and agreed to by the employer and the exclusive bargaining representative, after July 1, 1998, may constitute the plan for the salary distribution. The Department will review the plan to ensure that the salary adjustment per diem is used solely to increase the compensation of facility employees. To be eligible, a facility must submit its plan for the salary distribution by December 31, 1998. If a facility's plan for salary distribution is effective for its employees after July 1, 1998, the salary adjustment cost per diem is effective the same date as its plan.

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D. Cost report. Additional costs incurred by facilities as a result of this salary adjustment are not allowable costs for purposes of the December 31, 1998, cost report.

E. Salary adjustment. In order to apply for a salary adjustment, a facility paid pursuant to the performance based contracting demonstration waiver project, must report the information referred to in item A in the application, in the manner specified by the Department.

Section 17.030 Emergency relocations for ICF/MR residents. In emergency situations, the Department may order the relocation of existing ICF/MR beds, transfer residents, and establish an interim payment rate under the rate-setting methodology for up to two years, as necessary to ensure the replacement of original services for the residents. The payment rate will be based on projected cost and is subject to settle-up. An emergency situation exists when it appears to the Department that the health, safety, or welfare of residents may be in jeopardy due to imminent or actual loss of use of the physical plant or damage to the physical plant making it temporarily or permanently uninhabitable. The subsequent rate for a facility providing services for the same residents following a temporary emergency situation must be based upon the costs incurred during the interim period if the residents are permanently placed in the same facility. If the residents need to be relocated for permanent placements, the temporary emergency location must close and the procedures for establishing rates for newly constructed or newly established facilities in Section 12.000 must be followed.

Section 17.040 Crisis capacity demonstration project. A demonstration project for a two year period for one facility to provide crisis intervention for up to four individuals was approved by the state legislature. Additional costs for the demonstration project were based on new staff required, less the current staff to be deleted. Additional costs for meal assistants were then determined for the project. A resident day divisor was computed based on estimated occupancy of the ICF/MR and the Crisis Center using the new license capacity. The additional costs were then divided by the estimated resident days (92%) to arrive at the per diem.

Effective for services rendered from April 1, 1996, to September 30, 1996, and for rate years beginning on or after October 1, 1996, the maintenance limitation in Section 7.010, item A, subitem (2), for this facility is calculated to reflect capacity as of October 1, 1992. The maintenance limit is the per diem limitation otherwise in effect adjusted by the ratio of licensed capacity days as of October 1, 1992, divided by resident days in the reporting year ending December 31, 1993.

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94-19/93-38/92-39/91-36/90-09/89-65/89-56/88-86/88-24/87-81)

17.045 Rate adjustment for medically fragile individual. Beginning July 1, 1996, the Department shall increase reimbursement rates for a facility located in Chisholm and licensed as an ICF/MR since 1972, to cover the cost to the facility for providing 24-hour licensed practical nurse care to a medically fragile individual admitted on March 8, 1996. The Department shall include in this higher rate a temporary adjustment to reimburse the facility for costs incurred between March 8, 1996 and June 30, 1996. This higher rate will be calculated using Medicare cost-based principles of reimbursement.

Once the resident is discharged, the Department will reduce the facility's payment rate by the amount of the cost of the 24-hour licensed practical nurse care.

Section 17.050 Downsizing demonstration projects. A demonstration project for one facility to downsize from 45 beds to 21 beds and a second facility to downsize from 15 beds to 11 beds. The projects must be approved by the commissioner, and must include criteria for determining how individuals are selected for alternative services and the use of a request-for-proposal process in the selection of vendors for alternative services. The projects must also include alternative services for residents who will be relocated, time lines for that relocation and decertification of beds, and adjustments of each facility's operating cost rate under Section 7.000 as necessary to implement the project.

Each facility's aggregate investment-per-bed limit in effect before downsizing must be the facility's investment-per-bed-limit after downsizing. Each facility's total revenues after downsizing must not increase as a result of the downsizing project. Each facility's total revenues before downsizing will be determined by multiplying the payment rate in effect the day before the downsizing is effective by the number of resident days for the reporting year preceding the downsizing project.

For purposes of this project, the average medical assistance rate for home- and community-based services must not exceed the rate made available under Minnesota law.

Section 17.060 Assignment of mortgage payment. If a facility requests the Department to assign its monthly mortgage payment to the Minnesota Housing Finance Agency or other government entity, the Department shall comply provided that a mutually acceptable written agreement between the parties governing the transactions is developed and signed by the parties.

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SUPPLEMENT 1
ATTACHMENT 4.19-D (ICF/MR)
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Items 10 to 13 are subject to the Health Care Financing Administration approval of an amendment to Minnesota's State plan. The Department agrees to seek approval from the Health Care Financing Administration and make its best efforts to obtain such approval. If items are not approved by the Health Care Financing Administration, the parties agree to negotiate in good faith to compensate the Provider in a like manner, subject to Health Care Financing Administration approval.

10. The administrative cost limitations in Section 7.010 shall not apply on the interim and settle-up cost report payment rates. The administrative cost limitation on the interim and settle-up cost report for administrative costs including the allocated portion of payroll taxes and fringe benefits shall be _____ per day for each day covered by the interim/settle-up period, not to exceed a total of _____. The amounts under this item will be established after 90 days of management experience by the managing agent from the effective date of this agreement and shall be incorporated into the computation of the interim payment rate which shall be retroactive to _____.
11. The central office cost allocation requirements of Section 3.040 shall not apply to the interim and settle-up cost report payment rates for the managing agent's central office costs associated with managing the Facility, except that additional directly identified costs of the managing agent must be allocated to the Facility, and shall be non-allowable costs. The manager's fee established under paragraph 4 of the Management Agreement shall be an allowable administrative cost of the Facility subject to paragraph 10 above.
12. If the payment rate that would have been established effective _____, under Attachment 4.19-D (ICF/MR), includes a payback which is the result of the application of those laws and rules, the Provider agrees to repay the Department that amount, as may be adjusted for resolved appeals, at the end of the closure period. Any other outstanding appeals shall be resolved in accordance applicable laws and rules.
13. During the period of closure, the Provider may rent portions of the physical plant to the general public for non-ICF/MR services, provided that the income earned from such rental is offset in total against the Facility's allowable property-related costs on the settle-up cost report. The operating and property cost allocation provisions of Attachment 4.19-D (ICF/MR) relating to assigning the cost of renting to non-ICF/MR services shall not apply for the portion of the closure period during which the renting of portions of the physical plant to the general public for non-ICF/MR services occurs.